

AMENDMENTS TO THE DRAWINGS

Please replace figure 3.

REMARKS

Claims 21-24 and 28-36 are pending. Claim 21 has been amended. The amendments to claim 21 are supported, for example, by original figure 3 (immobilization element is shown as being inserted in between the surfaces of the sacroiliac joint and the extra-articular recess) and by the specification at page 4, lines 4-6 (“presumably immobilization of the joint reduces or eliminates contact between worn or damaged sections of the joint”); page 5, line 4 (“immobilization points can be identified...based on appropriate positioning of the adjacent bones and appropriate anchoring to effect the immobilization and ligamentotaxis”); page 5, line 16 (“the immobilization element can be...a wedge”); page 11, line 18 and 19 (“immobilization element 126 can be comprised...of...wedges”); page 2, line 9 (“performing an incision suitable for the placement of a cannula or guide pin”); and page 16, lines 1-3 (“While the guide pin can be used for open or less invasive procedures, if a less invasive procedure is performed, the cannula is generally placed around the guide pin”). Applicants also submit a definition of ligamentotaxis, which is defined as “the indirect reposition of retropulsed intraspinal bony fragments by the application of lordosis and distraction forces.” See the attached sheets from Wikipedia information.

Applicants also point out that the provisional application supports the amendments, including power points showing an even clearer version of figure 3 and disclosing ligamentotaxis. Applicant has submitted the clearer version of figure 3 from the provisional as a replacement of figure 3. Replacement figure 3 more clearly shows the immobilization/fusion element inserted into the sacroiliac joint between the ilium and sacrum bones. Applicants herein attach portions of the provisional applications and original figure 3 that support the amendments.

No new matter has been introduced by these amendments. Applicant respectfully request reconsideration of the rejection based on the following comments.

Telephonic Interview

Applicant thanks Examiner David C. Comstock for the telephonic interviews conducted on October 27, 2008 and November 13, 2008 with Applicant's undersigned representative.

October 27, 2008

Examiner provided useful insight. Examiner indicated that the application is probably allowable and provided suggestions on how to overcome the outstanding rejections. Examiner emphasized that a clearer version of figure 3 along with thorough indication of support for any amendments would help the application along. Examiner also suggested that the features of inserting the immobilization element exclusively or specifying the orientation at which the immobilization element is inserted into the sacroiliac joint relative to the human axes.

November 13, 2008

Examiner reviewed a draft of the current response and indicated that the amendment to claim 21 should overcome Cain. Examiner also indicated that a further search must be conducted.

Claim Objections

The Examiner objected to claims 21-24 and 28-36 based on “the” immediately preceding “opening.” In light of clarifying amendments, this should no longer be an issue. Applicants respectfully request withdrawal of the claim objections.

Rejection under 35 U.S.C. § 112

The Examiner rejected claims 21-24 and 28-36 for lack of support for the feature “...inserting an immobilization/fusion element into the opening of the sacroiliac joint along the

crack of the joint or extra-articular recess...” In light of clarifying amendments, this should no longer be an issue. Furthermore, Applicants’ undersigned representative has thoroughly pointed out support for amendments and provided previous and clearer versions of figure 3.

Rejection under 35 U.S.C. § 102(b) by Cain

The Examiner rejected claims 21-23, 28, 29, 32, 33, 35 and 36 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,334,205 to Cain (Cain). Claim 21 has been amended to more particularly point out Applicants’ invention. Applicants respectfully request withdrawal of the rejection.

Cain fails to disclose the features of claim 21. For example, claim 21 recites “...the method comprising inserting an immobilization/fusion element into the sacroiliac joint between the ilium and the sacrum bones through the extra-articular recess to provide distracting forces resulting in ligamentotaxis to drive apart the surfaces of the ilium and sacrum bones that form the sacroiliac joint and adjoining surfaces of the extra-articular recess.” To fix loosened sacroiliac joints, Cain discloses tightening or securing the joint by using fixation screws to drive the surfaces of the ilium and sacrum bones closer together. Applicant’s invention is directed to driving **apart** the surfaces of the ilium and sacrum bones while Cain’s invention is directed to driving **together** the surfaces of the ilium and sacrum bones. Any modification of Cain to provide for the features of Applicants’ claimed invention would render Cain unsatisfactory for its intended purpose and radically change the principle of operation of Cain.

Cain clearly fails to *prima facie* anticipate or render obvious claim 21. Accordingly, claim 21 and its dependent claims 22-24 and 28-36 should be allowed. While Applicants do not acquiesce with respect to the specific assertions regarding the features of the dependent claims, these issues are presently moot in light of the discussion above.

Rejection under 35 U.S.C. § 103(a) over Cain in view of Chang et al.

The Examiner rejected claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Cain in view of U.S. Patent Publication 2002/0099288 to Chang et al. (Chang). As discussed above, Cain fails to disclose or suggest the limitations of claim 21 as amended. Chang fails to remedy the deficiencies of Cain. Specifically, Chang fails to disclose or suggest “...the method comprising inserting an immobilization/fusion element into the sacroiliac joint between the ilium and the sacrum bones through the extra-articular recess to provide distracting forces resulting in ligamentotaxis to drive apart the surfaces of the ilium and sacrum bones that form the sacroiliac joint and adjoining surfaces of the extra-articular recess.” Thus, the combined teachings of these references do not teach this feature of the presently claimed invention. The references alone or combined do not render Applicant's claimed invention *prima facie* obvious. Applicant does not acquiesce with respect to the specific assertions regarding the features of these claims, but these issues are rendered moot in light of the discussion above.

Rejection under 35 U.S.C. § 103(a) over Cain in view of Bowman et al.

The Examiner rejected claims 30 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Cain in view of U.S. Patent 4,950,270 to Bowman et al. (Bowman). As discussed above, Cain fails to disclose or suggest the limitations of claim 21 as amended. Bowman fails to remedy the deficiencies of Cain. Specifically, Bowman fails to disclose or suggest “...the method comprising inserting an immobilization/fusion element into the sacroiliac joint between the ilium and the sacrum bones through the extra-articular recess to provide distracting forces resulting in ligamentotaxis to drive apart the surfaces of the ilium and sacrum bones that form the sacroiliac joint and adjoining surfaces of the extra-articular recess.” Thus, the combined teachings of these references do not teach this feature of the presently claimed invention. The references alone or combined do not render Applicant's claimed invention *prima*

facie obvious. Applicant does not acquiesce with respect to the specific assertions regarding the features of these claims, but these issues are rendered moot in light of the discussion above.

Rejection under 35 U.S.C. § 103(a) over Cain in view of Helland

The Examiner rejected claim 34 under U.S.C. § 103(a) as being unpatentable over Cain in view of U.S. Patent 4,488,542 to Helland. As discussed above, Cain fails to disclose or suggest the limitations of claim 21 as amended. Helland fails to remedy the deficiencies of Cain. Specifically, Helland fails to disclose or suggest “...the method comprising inserting an immobilization/fusion element into the sacroiliac joint between the ilium and the sacrum bones through the extra-articular recess to provide distracting forces resulting in ligamentotaxis to drive apart the surfaces of the ilium and sacrum bones that form the sacroiliac joint and adjoining surfaces of the extra-articular recess.” Thus, the combined teachings of these references do not teach this feature of the presently claimed invention. The references alone or combined do not render Applicant's claimed invention *prima facie* obvious. Applicant does not acquiesce with respect to the specific assertions regarding the features of these claims, but these issues are rendered moot in light of the discussion above.

Rejection under 35 U.S.C. § 103(a) over Cain in view of Skiba

The Examiner rejected claim 34 under U.S.C. § 103(a) as being unpatentable over Cain in view of US Patent 5,743,914 to Skiba. As discussed above, Cain fails to disclose or suggest the limitations of claim 21 as amended. Skiba fails to remedy the deficiencies of Cain. Specifically, Skiba fails to disclose or suggest “...the method comprising inserting an immobilization/fusion element into the sacroiliac joint between the ilium and the sacrum bones through the extra-articular recess to provide distracting forces resulting in ligamentotaxis to drive apart the surfaces of the ilium and sacrum bones that form the sacroiliac joint and

adjoining surfaces of the extra-articular recess.” Thus, the combined teachings of these references do not teach this feature of the presently claimed invention. The references alone or combined do not render Applicant's claimed invention *prima facie* obvious. Applicant does not acquiesce with respect to the specific assertions regarding the features of these claims, but these issues are rendered moot in light of the discussion above.

CONCLUSIONS

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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